

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

United States of America

v.

Case No. 2:19-cr-147

Jayvon G. Smith

OPINION AND ORDER

By judgment entered on September 16, 2020, defendant was sentenced to terms of incarceration of 36 months on Count 1, being a felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1). Defendant is confined in the Butler County Jail. Therefore, the court assumes that the administrative procedures used by the Bureau of Prisons for compassionate release motions are not yet available to the defendant. According to defendant, his proposed release date from the Bureau of Prisons is December 28, 2021.

On November 30, 2020, defendant submitted a letter which was placed on the docket as a motion for compassionate release under 18 U.S.C. §3582(c)(1)(A)(i), as amended by the First Step Act of 2018. See Doc. 57. Defendant cited the risks posed by the COVID-19 pandemic in light of his medical conditions. Under §3582(c)(1)(A)(i), this court can reduce a defendant's sentence if the court finds that "extraordinary and compelling reasons warrant such a reduction[.]" 18 U.S.C. §3582(c)(1)(A)(i). If the court finds that extraordinary and compelling reasons for a sentence reduction have been shown, the court, after considering the factors set forth in 18 U.S.C. §3553(a), may reduce the term of imprisonment and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment.

§3582(c)(1)(A).

Counsel was appointed to represent the defendant, and a supplemental motion was filed on December 22, 2020. See Doc. 59. Defendant now argues that he is at an increased risk of serious illness due to COVID-19 due to his obesity. Defendant also has angiosarcoma, a form of cancer which necessitated surgery in October to remove a tumor from the base of his skull. As a result, defendant's right eye is stitched shut and he has lost the hearing in his right ear. In a reply filed on January 4, 2021, counsel stated that defendant is currently undergoing radiation therapy through the University of Cincinnati Health System. Counsel indicated that he has requested medical records from the Butler County Jail but has not yet received them. See Doc. 62.

The government filed a response in opposition to the motion on December 28, 2020. See Doc. 61. The government argued that the defendant's motion is barred by the terms of his plea agreement, which included a waiver of appeal and of the right to attack his conviction or sentence collaterally, including by way of a motion brought under 18 U.S.C. §3582. See Doc. 26, p. 4. However, the government has now filed a motion for leave to file a sur-reply, and has attached the proposed sur-reply to the motion. The motion for leave to file the tendered sur-reply (Doc. 63) is granted.

In the sur-reply, counsel for the government states that he was informed by the United States Marshal's Service that the defendant could not be transferred to the Federal Medical Center at Butner, North Carolina, in the foreseeable future due to lack of space. Counsel further states that in light of the severity of defendant's medical conditions and his on-going treatment needs,

which would require transporting him to and from local hospitals, thus exposing him to an increased risk of contacting other diseases, including COVID-19, the government is no longer seeking enforcement of the waiver provision in this case. In addition, the government does not oppose defendant's motion on the merits. The government agrees that defendant's terminal brain cancer and ongoing radiation therapy constitute extraordinary and compelling reasons for a reduction in sentence, and that those reasons are not outweighed by the statutory sentencing factors under 18 U.S.C. §3553(a).

This court agrees that compassionate release is warranted under the particular circumstances of this case. The motions for compassionate release (Docs. 57 and 59) are granted. The sentence of incarceration previously imposed in this case on Count 1 of the indictment is reduced to a sentence of time served. Defendant shall serve a term of supervised release which will commence upon his release from incarceration and expire on December 28, 2021. While on this term of supervised release, defendant shall comply with the standard conditions of supervision in this district, and with the following special conditions of supervision:

- 1) The defendant shall participate in vocational and educational services at the direction of the U.S. Probation Officer.

- 3) The defendant shall participate in a program of mental health assessment and/or counseling, as directed by the U.S. Probation Office, until such time as the defendant is released from such program by the Probation Office. The co-payment is waived for these services.

- 3) The defendant shall participate in a program of testing and treatment for alcohol and controlled substance abuse, as directed by the U.S. Probation Office, until such time as the defendant is released from

the program by the Probation Office. The co-payment is waived for these services.

4) Defendant shall be placed on the home detention component of the location monitoring program. While on home detention in the location monitoring program, the defendant will be restricted to his residence at all times, except for medical appointments and other activities pre-approved by the officer. The defendant shall be monitored by the use of location monitoring technology at the discretion of the probation officer.

After the completion of this term of supervised release on December 28, 2021, defendant shall then begin to serve the three-year term of supervised release previously imposed in this case.

Defendant indicates that he plans to reside with his mother in Columbus, Ohio. Defendant is instructed that he must report to the Probation Office in Columbus, Ohio, within 72 hours of his release from imprisonment unless the Probation Office instructs him to report to a different probation office or within a different time frame. Defendant should call the Probation Office at (614)-719-3100 to receive instructions on how to report.

Date: January 5, 2021

s/James L. Graham  
James L. Graham  
United States District Judge